

**ORIGINAL**

COMMISSIONERS  
KRISTIN K. MAYES – Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

**OPEN MEETING ITEM**



0000093742

MICHAEL P. KEARNS  
Interim Executive Director

**RECEIVED**

**ARIZONA CORPORATION COMMISSION**

DATE: FEBRUARY 13, 2009

2009 FEB 13 P 12:40

DOCKET NO: T-20559A-07-0613

AZ CORP COMMISSION  
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

CONSUMER TELECOM, INC.  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

FEBRUARY 23, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

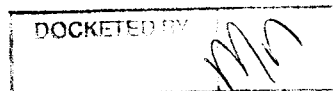
MARCH 3, 2009 and MARCH 4, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

**DOCKETED**

FEB 13 2009



MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman  
5 GARY PIERCE  
6 PAUL NEWMAN  
7 SANDRA D. KENNEDY  
8 BOB STUMP

9 IN THE MATTER OF THE APPLICATION OF  
10 CONSUMER TELECOM, INC., FOR A  
11 CERTIFICATE OF CONVENIENCE AND  
12 NECESSITY TO PROVIDE RESOLD LONG  
13 DISTANCE TELECOMMUNICATIONS  
14 SERVICES.

DOCKET NO. T-20559A-07-0613

DECISION NO. \_\_\_\_\_

15 ORDER

16 Open Meeting  
17 March 3 and 4, 2009  
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 \* \* \* \* \*

21 Having considered the entire record herein and being fully advised in the premises, the  
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 FINDINGS OF FACT

24 1. On October 22, 2007, Consumer Telecom, Inc. ("CTI") filed with the Commission an  
25 application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance  
26 telecommunications services within a service area encompassing the entire State of Arizona.

27 2. On June 25, 2008, the Commission's Utilities Division Staff ("Staff") issued a Letter  
28 of Insufficiency and First Set of Data Requests.

3. On July 15, 2008, CTI filed a response to Staff's First Set of Data Requests.

4. On November 4, 2008, Staff filed its Staff Report recommending approval of CTI's  
application.

5. Pursuant to a December 11, 2008, Procedural Order, on January 9, 2009, CTI filed an  
Affidavit of Publication showing that notice of its application had been published in  
*The Arizona Republic* on January 5, 2009.

1           6.       On January 23, 2009, Staff filed an Amended Staff Report.

2           7.       On January 26, 2009, Staff filed its Erratum to Amended Staff Report.

3       **Fitness and Properness to Obtain a CC&N**

4           8.       CTI is a California "C" corporation, granted authority to do business in Arizona as a  
5 foreign corporation on September 13, 2007.

6           9.       CTI is in good standing with the Commission's Corporations Division.

7           10.      CTI does not currently hold a CC&N to provide telecommunications services in  
8 Arizona and is not providing telecommunications services in Arizona.

9           11.      CTI has indicated that neither CTI nor any of its officers, directors, partners, or  
10 managers have been or are currently involved in any civil or criminal investigations, have had  
11 judgments entered in any civil or criminal matter or levied by any administrative or regulatory  
12 agency, or have been convicted of any criminal acts within the past 10 years.

13          12.      CTI has indicated that neither CTI nor any of its officers, directors, partners, or  
14 managers have been or currently are involved in any formal or informal complaint proceedings  
15 pending before any state or federal regulatory commission, administrative agency, or law  
16 enforcement agency.

17          13.      Staff contacted the public utility commissions ("PUCs") in twelve of the 35 states in  
18 which CTI currently offers resold long distance services to verify that CTI is certificated or registered  
19 to provide resold long distance services and to inquire as to consumer complaints. According to  
20 Staff, nine of the twelve PUCs contacted reported no complaints.

21          14.      According to Staff, the Wyoming PUC reported one alleged slamming complaint in  
22 2008, but an investigation found through a third-party verification that the customer had authorized  
23 the switch.

24          15.      Staff further states that the Washington PUC also reported one slamming complaint  
25 and one billing complaint in 2007, and one billing complaint in 2008. The slamming complaint was  
26 resolved in favor of CTI, and both billing complaints were also resolved.

27          16.      Staff reports that, according to the New Jersey PUC, there were six slamming  
28 complaints against CTI in the past 12 months. In each of the six cases, CTI provided a third party

1 verification indicating authorization of the switch.

2 17. Staff notes that a search of the Federal Communications Commission website found  
3 that there have been no complaints filed against CTI.

4 18. Finally, Staff states that the Consumer Services Section of the Utilities Division  
5 reported no complaints, inquiries, or opinions filed within Arizona from January 2004 through  
6 June 23, 2008.

7 **Technical Capabilities**

8 19. CTI intends to offer intrastate resold long distance telecommunications services to  
9 subscribers in Arizona.

10 20. CTI's owner, director and officer is Mr. Joseph Nicotra.

11 21. CTI has authority to provide, and/or is providing, resold long distance  
12 telecommunications services similar to those it intends to offer in Arizona in 35 states.

13 22. Based on its operations in other states, Staff has determined that CTI has sufficient  
14 technical capabilities to provide resold long distance telecommunications services in Arizona.

15 **Financial Resources**

16 23. CTI provided audited financial statements for the two-year period ending December  
17 31, 2007, as well as financial statements for the six month period ending June 2008. According to the  
18 Staff Report, CTI's 2005 financial statements list assets of \$13,118, negative equity of \$36,565, and a  
19 net loss of \$578. CTI's 2006 financial statements list assets of \$319,632, equity of \$272,705, and a  
20 net income of \$309,271. CTI's 2007 financial statements list assets of \$1,439,999, negative equity of  
21 \$86,512, and a net loss of \$376,556. CTI's 2008 financial statements list assets of \$1,526,165, equity  
22 of \$5,447, and a net income of \$23,434.

23 24. CTI projects total revenues generated by the provision of telecommunications services  
24 to Arizona customers for the first 12 months of operations to be \$5,000, with operating expenses  
25 during that period of \$4,000.

26 25. CTI projects the net book value of all Arizona jurisdictional assets and the projected  
27 value of all Arizona assets after the first 12 months of operations to be zero.

28 26. Staff stated that were CTI to experience financial difficulty, it would have only a

1 minimal impact on its customers because many companies provide resold long distance  
2 telecommunications services, and facilities-based providers are also available. Staff also states that  
3 CTI's customers will be able to access alternative toll service providers or resellers via 1+101XXXX  
4 access.

5 **Proposed Rates**

6 27. Staff indicates that the rates proposed by CTI are for competitive services and that  
7 rates for competitive telecommunications services are generally not established according to rate-of-  
8 return regulation.

9 28. Staff has determined that CTI's fair value rate base is zero. While Staff considered the  
10 fair value rate base information submitted by CTI, Staff determined that the fair value rate base  
11 information should not be given substantial weight in its analysis.

12 29. As a reseller of services purchased from other telecommunications companies, CTI  
13 will have no market power and will have to compete with other providers to obtain subscribers to its  
14 services. In light of this competitive market, Staff believes that CTI's proposed tariffs will be just  
15 and reasonable.

16 30. Staff has reviewed CTI's proposed rates and determined that they are just and  
17 reasonable.

18 31. CTI's tariff indicates that it will not collect advance payments, deposits, and/or  
19 prepayments from its resold long distance customers.

20 **Regulatory Requirements**

21 32. Commission rules require CTI to file a tariff for each competitive service that states  
22 the maximum rate as well as the effective (actual) price that will be charged for the service. Under  
23 Arizona Administrative Code ("A.A.C.") R14-2-1109(A), the minimum rate for a service must not be  
24 below the total service long-run incremental cost of providing the service. Any change to CTI's  
25 effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum  
26 rate for a service in CTI's tariff must comply with A.A.C. R14-2-1110.

27 33. A.A.C. R14-2-1204(A) requires all telecommunications service providers that  
28 interconnect to the public switched network to provide funding for the Arizona Universal Service

1 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers  
2 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.  
3 R14-2-1204(B)(2).

4 34. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from  
5 unauthorized carrier changes ("slamming") and apply to each public service corporation providing  
6 telecommunications services within the State of Arizona and over which the Commission has  
7 jurisdiction.

8 35. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from  
9 unauthorized carrier charges ("cramming") and apply to each public service corporation providing  
10 telecommunications services within the State of Arizona and over which the Commission has  
11 jurisdiction.

12 36. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file  
13 an application for authorization with the Commission before it discontinues service; the rule also  
14 establishes customer notice requirements and other requirements related to discontinuance of service.

15 **Staff's Recommendations**

16 37. Staff recommends approval of CTI's application and further recommends:

- 17 a. That CTI be ordered to comply with all Commission rules, orders, and other  
18 requirements relevant to the provision of intrastate telecommunications  
19 service;  
20 b. That CTI be ordered to maintain its accounts and records as required by the  
21 Commission;  
22 c. That CTI be ordered to file with the Commission all financial and other reports  
23 that the Commission may require, in a form and at such times as the  
24 Commission may designate;  
25 d. That CTI be ordered to maintain on file with the Commission all current tariffs  
26 and rates and any service standards that the Commission may require;  
27 e. That CTI be ordered to comply with the Commission's rules and to modify its  
28 tariffs to conform to those rules if it is determined that there is a conflict  
between CTI's tariffs and Commission rules;  
f. That CTI be ordered to cooperate with Commission investigations, including  
but not limited to customer complaints;  
g. That CTI be ordered to participate in and contribute to the AUSF as required  
by the Commission;

- h. That CTI be ordered to notify the Commission immediately upon changes to its name, address, or telephone number;
- i. That if CTI wants to collect advances, deposits, and/or prepayments from its resold interexchange customers, CTI should be required to file an application with the Commission for Commission approval. Such application must reference the Decision in this docket and must explain CTI's plans for procuring its performance bond or irrevocable sight draft letter of credit;
- j. That CTI's intrastate interexchange service offerings be classified as competitive pursuant to A.A.C. R14-2-1108;
- k. That the maximum rates for CTI's services be the maximum rates proposed by CTI in its proposed tariffs;
- l. That the minimum rates for CTI's services be the total service long-run incremental costs of providing those services, as set forth in A.A.C. R14-2-1109;
- m. If CTI states only one rate for a service in its proposed tariff, that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate;
- n. That CTI's fair value base rate is zero;
- o. That should CTI request to discontinue and/or abandon its service area, CTI must provide notice to both the Commission and its customers, in accordance with A.A.C. R-14-2-1107; and
- p. That CTI be ordered to do the following and that its CC&N be rendered null and void, after due process, if it fails to do the following:
  - i. CTI shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days before providing service, whichever comes first, and in accordance with this Decision.

39. Staff's recommendations are reasonable and should be adopted.

40. Although CTI has had several complaints brought against it in other jurisdictions the information provided by Staff indicates that those complaints were determined to be unfounded. Because CTI's complaint history does not indicate a pattern of problems or misconduct, and because CTI will not be collecting advance payments, deposits, and/or prepayments from its resold long distance customers, it is not necessary to require the Company to file a performance bond or irrevocable sight draft letter of credit.

#### CONCLUSIONS OF LAW

1. Upon receiving a CC&N, CTI will be a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

1 || 2. The Commission has jurisdiction over CTI and the subject matter of the application.

2           3.       A.R.S. § 40-282 allows a telecommunications company to file an application for a  
3       CC&N to provide competitive telecommunications services.

4           4.       A.R.S. § 40-282 allows the Commission to grant a CC&N without first conducting a  
5 hearing if the CC&N is for resold telecommunications services.

6 || 5. Notice of CTI's application was given in accordance with the law.

6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,  
it is in the public interest for CTI to provide the telecommunications services for which it has  
requested authorization in its application.

10           7.       CTI is a fit and proper entity to receive a CC&N authorizing it to provide resold long  
11 distance telecommunications services in the State of Arizona.

12           8.     The telecommunications services that CTI desires to provide are competitive in  
13    Arizona.

14           9. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is  
15 just and reasonable and in the public interest for CTI to establish rates and charges for competitive  
16 services that are not less than CTI's total service long-run incremental costs of providing the  
17 competitive services approved herein.

18            10.     Staff's recommendations, as set forth in Findings of Fact No. 38 are reasonable and  
19     should be adopted.

11. CTI's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide Arizona customers.

12. CTI's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

24 **ORDER**

IT IS THEREFORE ORDERED that the application of Consumer Telecom, Inc., for a Certificate of Convenience and Necessity to provide resold long distance telecommunications services in Arizona is hereby granted conditioned upon compliance with conditions and recommendations set forth in Findings of Fact No. 38.

1 IT IS FURTHER ORDERED that if Consumer Telecom, Inc., fails to meet the conditions  
2 outlined in Findings of Fact No. 38(p) within the timeframes therein, the Certificate of Convenience  
3 and Necessity conditionally granted herein shall become null and void after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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7

8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
9

10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
11

12 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim  
13 Executive Director of the Arizona Corporation Commission,  
14 have hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

17 \_\_\_\_\_  
18 MICHAEL P. KEARNS  
19 INTERIM EXECUTIVE DIRECTOR  
20

21 DISSENT \_\_\_\_\_  
22

23 DISSENT \_\_\_\_\_  
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25  
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28

1 SERVICE LIST FOR: CONSUMER TELECOM, INC.

2 DOCKET NO.: T-20559A-07-0613

3

4 Andrew O. Isar  
5 MILLER ISAR, INC.  
7901 Skansie Avenue, Suite 240  
6 Gig Harbor, Washington 98335-8349

7 Joseph A. Nicotra  
701 North Green Valley Parkway, Suite 200  
8 Henderson, Nevada 89104-6178

9 Janice Alward, Chief Counsel  
Legal Division  
10 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

11 Ernest G. Johnson, Director  
Utilities Division  
12 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
13 Phoenix, AZ 85007

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